

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5244 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RESUMEJAIPRAKASH SONI

Versus

COMMISSIONER OF POLICE

Appearance:

MR AZIZ AN ALVI for Petitioner

RULE SERVED for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/07/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order dated 21.11.97 passed under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, by the Police Commissioner, AHmedabad.

In the grounds of detention, supplied to the petitioner, it is alleged against the petitioner that the petitioner is possessing fire-arms without licence and is engaged in the illegal activities of purchasing and selling the same and for that, 2 criminal cases under sec. 25(1) of the Arms Act have been registered. Besides this criminal cases, further reliance is also placed on the statements of 4 witnesses for the alleged incidents dated 21.10.1997, 15.10.97 that the concerned witness was beaten when the petitioner was not allowed to keep fire arms in the house of the witness and, on another occasion, the concerned witness was beaten on the suspicion that the concerned witness is keeping a watch on the movements of the petitioner and his men. When the concerned witness was beaten, many people gathered, however, they started running helter and skelter when the petitioner rushed towards them and an atmosphere of fear and insecurity was created. Considering this material, the detaining authority has recorded a finding that the petitioner is a dangerous person within the meaning of sec. 2(c) of the Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at the best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at the best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also vitiated. The order of detention is therefore, liable to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 21.11.1997 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful

reason. Rule made absolute.

(K. R. VYAS, J.)